

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 09-00788 EMC	DATE FILED 2/23/09	U.S. DISTRICT COURT 450 Golden Gate Avenue; P.O. Box 36060; San Francisco, CA 94102
PLAINTIFF ALIPHCORP INC		DEFENDANT PLANTRONICS INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see Complaint		
2 5,712,453		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK Sheila Rash	DATE February 23, 2009
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

COPY

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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E-filing

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EMC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 ALIPHCOM, INC.,

17 Plaintiff,

18 v.

19 PLANTRONICS, INC.,

20 Defendant.

CV

09

0788

COMPLAINT FOR DECLARATORY
RELIEF

DEMAND FOR JURY TRIAL

21 Plaintiff AliphCom, Inc. ("Aliph") alleges as follows:

22 PARTIES

23 1. Plaintiff AliphCom, Inc. is a California corporation with its principal place of
24 business at 99 Rhode Island Street, Third Floor, San Francisco, California 94103.
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26
27
28

COMPLAINT

pa-1320573

1 **GENERAL ALLEGATIONS**

2 10. On January 15, 2009, Plantronics filed the Texas Action against Aliph.
3 Plantronics accused Aliph's Jawbone New Fit Earbuds (the "Earbuds") of infringing one or more
4 claims of the '453 Patent.

5 11. Aliph denies that it infringes any valid claim of the patent in suit.

6 12. On February 13, 2009, for the convenience of parties and witnesses, in the interest
7 of justice, Aliph moved the court in the Texas Action for an order transferring that case to this
8 Judicial District pursuant to 28 U.S.C. § 1404(a). On information and belief, Plantronics opposes
9 transfer to this Judicial District.

10 13. On information and belief, after inspection of the file history of the patent in suit
11 and the assignment records of the United States Patent and Trademark Office ("USPTO"), it
12 appears that Plantronics may not be the sole owner of the patent in suit and, therefore, may lack
13 standing to maintain a lawsuit alleging infringement of the patent in suit.

14 14. An actual and justiciable controversy exists between Plantronics and Aliph
15 concerning whether Aliph infringes any valid claim of the patent in suit and whether Plantronics
16 is the owner of all right, title, and interest in and to the '453 Patent. Aliph now seeks a
17 declaratory judgment from this Court that the patent in suit is not infringed by Aliph or is invalid
18 or both. Aliph also seeks a declaratory judgment from this Court as to whether Plantronics is the
19 owner of all right, title, and interest in and to the '453 Patent.

20 **FIRST CLAIM FOR RELIEF**

21 **(Declaratory Judgment Regarding Infringement of the '453 Patent)**

22 15. Aliph incorporates by reference paragraphs 1 to 14 above.

23 16. Aliph does not and has not infringed, directly or indirectly, literally or by
24 equivalents, any valid and enforceable claim of the '453 Patent.

25 **SECOND CLAIM FOR RELIEF**

26 **(Declaratory Judgment Regarding Invalidity of the '453 Patent)**

27 17. Aliph incorporates by reference paragraphs 1 to 16 above.
28

1 18. The claims of the '453 Patent are invalid because, inter alia, the '453 Patent was
2 not obtained in a manner consistent with and required by the provisions of Title 35 of the United
3 States Code, and in particular because it fails to comply with at least the required conditions for
4 patentability under 35 U.S.C. §§ 102, 103 and/or 112.

5 **THIRD CLAIM FOR RELIEF**

6 **(Declaratory Judgment Regarding Ownership of the '453 Patent)**

7 19. Aliph incorporates by reference paragraphs 1 to 18 above.

8 20. On information and belief, Plantronics is not the owner of all right, title, and
9 interest in and to the '453 Patent and, accordingly, Plantronics lacks standing to bring a lawsuit
10 alleging infringement of the patent in suit.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Aliph prays for relief as follows:

13 1. That the Court declare that Aliph does not and has not infringed, directly or
14 indirectly, literally or by equivalents, any valid and enforceable claim of the '453 Patent.

15 2. That the Court declare that the claims of the '453 Patent are invalid;

16 3. That the Court declare that Plantronics is not the owner of all right, title, and
17 interest in and to the '453 Patent.

18 4. That the Court declare that this is an exceptional case under 35 U.S.C. § 285;

19 5. That the Court award Aliph its costs and fees in this action, including attorneys'
20 fees, and pre-judgment interest thereon; and

21 6. That the Court grant Aliph such other and further relief as the Court deems just
22 and proper.


23 **JURY DEMAND**

24 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Aliph hereby demands a trial
25 by jury of all issues so triable in this action.

1 Dated: February 23, 2009

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4 By:


JAMES POOLEY

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